

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACQUELINE DAVILA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:20-cv-01816-HBK

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY THE ACTION SHOULD NOT
BE DISMISSED FOR LACK OF
PROSECUTION

FOURTEEN-DAY DEADLINE

(Doc. No. 9)

This matter comes before the Court upon periodic review of the file. Plaintiff initiated this action on December 27, 2020. (Doc. No. 1). The Court granted Plaintiff's motion for leave to proceed *in forma pauperis*. (Doc. No. 4). On January 14 and 19, 2021, the Clerk issued summons (Doc. No. 5) and an amended scheduling order. (Doc. No. 6, 7). On January 28, 2022, the Commissioner lodges the certified administrative record ("CAR"). (Doc. No. 9). The filing of the CAR triggers certain deadlines, including the deadline for Plaintiff to file certain notices with the Court and to file an opening brief in this matter. (Doc. No. 7 at ¶¶3, 6). A review of the docket reveals no action by Plaintiff to prosecute this case subsequent to the filing of the CAR. *See* docket. Specifically, Plaintiff has not filed an opening brief by the deadline specified in the Scheduling Order. (*Id.*, requiring opening brief no later than 105 days after the filing of the CAR).

Federal Rule of Civil Procedure 41(b) permits courts to involuntarily dismiss an action

1 when a litigant fails to prosecute an action or fails to comply with a court order. *See* Fed. R. Civ.
2 P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations
3 omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
4 (“[T]he consensus among our sister circuits, with which we agree, is that courts may dismiss
5 under Rule 41(b) *sua sponte*, at least under certain circumstances.”). Local Rule 110 similarly
6 permits courts to impose sanctions on a party who fails to comply with a court order.

7 Accordingly, it is **ORDERED**:

8 1. Within **fourteen (14) days** from receipt of this Order, Plaintiff shall show cause why
9 this case should not be dismissed for failure to prosecute and/or failure to comply with the
10 Court’s Scheduling Order. If Plaintiff fails to respond to this Order, or explain his inability to
11 respond, the undersigned will recommend the District Court dismiss this case without further
12 notice.

13 2. Alternatively, Plaintiff may file a notice to voluntarily dismiss this case under Fed. R.
14 Civ. P. 41 (a) within **fourteen (14) days**.

15
16 Dated: August 9, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE